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10/802,589	03/17/2004	Ronald Bruce Hawkins	50T5731.01	3873
36738	7590	04/15/2009	EXAMINER	
ROGITZ & ASSOCIATES			STRONCZER, RYAN S	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/802,589	HAWKINS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ryan Stronczer	2425	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 21 January 2009.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,2 and 4-15 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,2 and 4-15 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

**Claims 1, 2, and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pontenzone et al. (Pub. No.: US2002/0152278) and further in view of Hori et al. (US Pat. No.: 7,209,942).**

As to amended claim 1, the rejection set forth in the previous Office Action is incorporated herein. As to the amended limitation that the database contains demographic data, Pontenzone teaches the recited system but does not explicitly teach the recited demographic data. In an analogous art, Hori teaches a method for a search engine to suggest content to a user; Fig. 2D teaches that the system considers the user profile when searching the database, said profile including the recited demographic data. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the system taught by Pontenzone with the user profile and preferences taught by Hori to provide users with content that they are more likely to purchase.

As to the amended limitation that

each playlist is uniquely associated with a respective consumer whose profile was used to generate the playlist; recalling a playlist for a respective consumer based on a consumer ID identifying the consumer; presenting, the playlist on a client device associated with the respective consumer; receiving at least one selection from the playlist; and processing the selection by transmitting to the client device a multimedia stream corresponding to the selection,

Pontenzone teaches that the system comprises a listener profile block 370 (see Fig.1) which allows users to create their own stations, each station comprising one or more playlists. The listener profile taught by Pontenzone is cumulative with the recited profile and consumer ID. That said playlist is “presented” on a client device and facilitates multimedia content to be transmitted to the user is inherent in Pontenzone, in that the Internet radio station of Pontenzone plays multimedia content in the order specified by a playlist (see, e.g., Fig. 2, 5, 8, 12, and para. 0066-67).

As to claim 2, the system taught by Pontenzone is intended to be used by any user with Internet access and a web-browser, thus the functionality of claims 2 and 4 are inherent in the system taught by Pontenzone.

Claim 4 recites the system of claim 1, wherein “the playlist is stored on the network, such that its consumer can share the playlist with other users on the network.” Fig .1 of Pontenzone teaches a system comprising a database **400** and a station and playlist management module **235** which are accessible to a user through front end **300**. Pontenzone further teaches that the station and playlist module “manages the content delivered by a number of stations over the network” [ABST]. In light of system 100 and the fact that the content streamed over the network by Pontenzone is intended to be shared with users via the Internet, the recited functionality is inherent in the system of Pontenzone.

**Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pontenzone et al. as applied to claim 1 above, and further in view of Asmussen et al. (Pub. No.: US2002/0042923) and Hempleman et al. (US Patent No.: 6,243,725).**

As to amended claim 5, the rejection set forth in the previous Office Action is incorporated herein. As to the amended limitation of "signifying whether all content in the playlist is available for playback or is pending," Pontenzone teaches:

A user (e.g., a music manager or a registered listener), associated with a playlist may view the playlist details and add songs to the playlist, provided the song has been properly encoded, i.e. is playable, in all required formats of the system. Blocks 250 and 530 may perform this playability validation on song recording data...As indicated, system 100 preferably only allows songs to be added to playlists if they are playable in each encoding format specified by system 100. The playability of songs is verified by validation of data block 530 in data source application component 500. [0067, 0073]

The "playability validation" taught by Pontenzone which only allows "playable" songs (i.e., songs which have been converted to an acceptable file format) to be added to the user's playlist is cumulative with the recited "signifying."

As to claim 6, Fig. 6-7 of Hempleman teach methods for accepting payment from a user. Regarding keeping records of transactions, Hempleman teaches, "*[r]eport information can be transmitted to the system 20 for billing purposes...as well as making royalty payments to appropriate recipients*" (Col. 7, Line 34-39). The system (object 20) is located remotely from the user and is connected to the terminal via an Internet connection, as shown in Fig. 6-7. As analyzed above the combination of Hempleman with Pontenzone would have been obvious to one of ordinary skill in the art at the time of the invention.

As to claim 7, Asmussen teaches a system which allows a user to search for multimedia content on a digital communication network and which tracks user data. Asmussen teaches, “[a] user database server **511** maintains an aggregator user database **512**, which stores and processes information including, but not limited to, user account data, user profile information, user subscription services, user access rights, and past user search and download data (if authorized by the user)” [0072]. It would have been obvious to one skilled in the art at the time of the invention to incorporate the user database server taught by Asmussen into the system taught by Pontenzone to provide better users of Pontenzone’s system with increased access to available content.

**Claims 8-12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pontenzone as applied to claim 1 above, and further in view of Asmussen and Holtz et al. (Pub. No.: US 2002/0053078).**

As to claim 8, Pontenzone teaches a method for generating a multimedia playlist based on a user search and allows users to create user profiles or identities that are stored on the network, but does not explicitly teach methods for archiving user search history or for using such archives to generate search results. Asmussen teaches an analogous method for searching content on a digital communications network, including functionality to store user profile information comprising:

user account type, user access level, and historical data. The user history analysis report is a summary of statistical analysis of the user's previous account activities that may include previous search requests, returned search results, and content download requests. [0078]

As to generating content suggestions based on the user profile data, paragraphs 0086 and 0116-117 of Holtz teach a system for generating content suggestions based on user profile data. Specifically, paragraph 0086 of Holtz teaches:

Each time enhanced media server 115 is accessed, data is captured and stored to develop a profile of the user. Every time the same enhanced media client 120 logs onto enhanced media server 115, enhanced media client 120 receives a customized preprogrammed show according to the user's profile.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the playlist generation system of Pontenzone with the user profile taught by Asmussen and the search method taught by Holtz to allow the system to present users with profile-specific content suggestions in a manner cumulative the claimed method.

Claim 9 recites the method of claim 8, "...without constraining the client device to be a particular single type of device." The playlist taught by Pontenzone is intended to be distributed to users via Internet radio. It is inherent that the playlist taught by Pontenzone can be accessed by users via more than one specific client device.

As to claim 10, both Pontenzone and Asmussen teach functionality for users to initiate a search.

As to claims 11 and 12, the recited functionality is inherent in the system taught by Pontenzone. Fig .1 of Pontenzone teaches a system comprising a database **400** and a station and playlist management module **235** which are accessible to a user through front end **300**. Pontenzone further teaches that the station and playlist module "*manages the content delivered by a number of stations over the network*" [ABST]. In light of system 100 and the fact that the content streamed over the network by

Pontenzone is intended to be shared with users via the Internet, the recited functionality is inherent in the system of Pontenzone.

As to claim 15 Asmussen teaches that the system is capable of receiving a search request from a user and in paragraph 0078 (cited above) teaches that the system further stores past search requests.

**Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pontenzone in view of Asmussen and Holtz as applied to claim 8 above, and further in view of Hempleman.**

As to claim 13, Pontenzone in view of Asmussen and Holtz teaches the method of claim 8, but does not explicitly teach that the user can purchase a specific title from the playlist as claimed. Asmussen teaches that a specific multimedia file may contain, “*...a program description, including program rating...billing information and digital rights management information*” [0017] but does not explicitly teach a mechanism for utilizing the billing data to purchase the specified content. Hempleman teaches an analogous system for creating a playlist via a user-initiated search request, similar to that taught by Pontenzone. Fig. 6 of Hempleman teaches a “credit card input device” that facilitates the purchase of multimedia content over a network. “*The unit 20 also supervisory and billing services in response to requests by the end user's unit 22 for access to one or more of the works stored in the inventory in the databases 20b*” (Col. 6, Lines 55-60). It would have been obvious to one of ordinary skill in the art at the time of the invention to

combine the purchasing functionality taught by Hempleman with the content request functionality taught by Pontenzone to facilitate the purchase of requested content.

As to claim 14, Fig. 6-7 of Hempleman teach methods for accepting payment from a user. Regarding keeping records of transactions, Hempleman teaches that “[r]eport information can be transmitted to the system **20** for billing purposes...as well as making royalty payments to appropriate recipients” (Col. 7, Line 34-39). The system (object **20**) is located remotely from the user and is connected to the terminal via an Internet connection, as shown in Fig. 6-7.

### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Stronczer whose telephone number is (571) 270-3756. The examiner can normally be reached on 7:30 AM - 5:00 PM (EDT), Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian T. Pendleton can be reached on (571) 272-7527. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 2425

/Brian T. Pendleton/  
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